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DEPT OF STATE FOR DRL/ILCSR ATTN: MARK MITTELHAUSER, EAP/K ATTN: ANDREW HYDE
DEPT OF LABOR FOR DOL/ILAB ATTN: KAREN TRAVIS

E.O. 12958: N/A
TAGS: KS ECIN ECON ELAB ETRD EAID
SUBJECT: UPDATE OF LABOR INFORMATION FOR MANDATORY US-KOREA FREE TRADE AGREEMENT/TPA REPORTING REQUIREMENTS

REF: A. STATE 36199

¶1. (U) Original questions are included below from reftel. Answers to questions follow after each question.

LEGAL FRAMEWORK FOR LABOR RIGHTS

¶2. (U) Question: Please provide a detailed summary of all new labor legislation passed in 2006 and 2007. Please provide copies of the text of this legislation, or indicate where source documents may be obtained online.

-See Table 1 for the detailed summary of all new labor legislations passed in 2006 and 2007.

-Texts of laws (in Korean) can be found in the Ministry of Labor's website (http://www.molab.go.kr) and the website of the Ministry of Government Legislation (http://www.klaw.go.kr). In addition, news regarding amendments of major laws can be found at News and Announcement of the MOL's English website (http://english.molab.go.kr). You can find additional information at the Labor News/Labor Today section of the Korea International Labor Foundation (KOILAF)'s English website (http://www.koilaf.org/KFeng/engMain/main.php ).

¶3. (U) Question: With respect to the request above, please provide as much information as possible on the revisions to the three laws constituting the Legislation on Industrial Advancement, and the three laws addressing non-regular workers, including citations to the amended laws and new laws. Please also provide a summary of the reaction of the public and the major actors in the labor relations arena to these new laws.

-Legislation on Industrial Relations Advancement
Full text and analysis of revisions available at:
http://www.koilaf.org/KFeng/engPublication/

-Public Reaction: Other than from trade union members, there was little attention given to the deal. Surprisingly, even though the agreement delayed the implementation of the legislation by another three years (it had already been delayed for ten years), the public chose not to criticize the Labor Minister for not taking a more assertive stance with employers and workers groups. The lack of public response is most likely due to the MOL's media campaign that portrayed the deal as in the best interest of the Korean economy. If the MOL had pushed for the implementation of the legislation allowing multiple unions and stopped the direct pay of union officials, it would have undoubtedly caused confusion and panic among employers and union members. In the end, the MOL was satisfied as long as the employers and workers were content with the

deal.

-Non-Regular Workers
Full text and analysis of revisions available at:
http://www.koilaf.org/KFeng/engPublication/
-Public Reaction: The Federation of Korean Trade Unions (FKTU), Ministry of Labor (MOL), Korean Tripartite Commission (KTC) and Korean Employer's Federation (KEF) all welcomed the agreement not only for the content of the legislation but also for their ability to work together and come to an agreement. NOTE: The agreement limits the amount of time an employer can employ a non-regular worker to two years. After two years, the employer must convert the worker to regular status. END NOTE. Noticeably absent from the process was the largest umbrella organization, the Korean Confederation of Trade Unions (KCTU), who vigorously spoke out against the deal saying it did not provide adequate protections for workers. The general sentiment in the public was that even a somewhat weaker deal was better than no deal at all.

¶4. (U) Question: Please provide a list and citations to any other general laws (i.e., not labor-specific legislation) which may apply to the labor rights which are the subject of this report. For example, we understand that the Penal Code governs legal action/remedies for unfair dismissals of workers, and for prosecutions of labor unions for obstruction of business. Is this correct? Are there are other laws we should be aware of?

-The provisions on the penalties imposed in the case of unfair dismissal of workers are prescribed in the Labor Standards Act and not in the Penal Code. The penalty provisions of the Labor Standards Act were abolished in the legislation for the advancement of labor relations law in June 2006. Instead, the labor law was revised so that a penalty will be imposed in the case when the employer does not implement a remedy order or the decision of the National Labor Relations Commission.

-With regard to the Penal Code governing legal action/remedies for prosecutions of labor unions for "obstruction of business", the "obstruction of business" charges are mainly applied to those who obstruct businesses of others by, for example, hacking into other people's computers, and are not specifically intended to regulate trade union activities.

-The Trade Union and Labor Relations Adjustment Act in Korea protects the right to collective action by stipulating that legitimate union activities shall not be punished on obstruction of business charges under the Criminal Code. There has been no case where workers participating in legal industrial action have been arrested on obstruction of business charges. However, if the strikers use violence or commit illegal acts, the obstruction of business charges can have been applied.

-The Korean government tries to minimize arrests, even in the case of illegal strikes, as long as the striking workers do not resort to acts of violence. Only in the case of striking workers committing severe acts, including aggressive violence with a deadly weapon, are they punished on obstruction of business charges under the Criminal Code.

¶5. (U) Question: Are any further changes to labor law being contemplated in 2007?

-See Table 2: MOL Legislation Action Plan 2007

ADMINISTRATION OF LABOR LAW

¶6. (U) Question: Please update the descriptions and analysis of the Ministry of Labor and the Korean Tripartite Commission (KTC). With respect to the KTC, please elaborate on the role it played in developing and passing new legislation in 2006, and the participation, or lack thereof, of the two major trade union federations as well as other relevant actors.

-In October 2003, the KTC began to discuss the 'Plans for the Advancement of Industrial Relations' drawn up by the government. However, discussions were not productive due to differences between of opinion between labor and management.

-Apart from the KTC discussion, in June 2004, a representative meeting of representatives from government, management and labor was held to discuss the 'Plans for the Advancement of Industrial Relations' along with a plan to reform the KTC. The KCTU also participated in this meeting. In December 2004, the KTC formed the 'Committee on Future Labor and Management Relations' composed of the FKTU, KEF, Labor Ministry, the KTC, KLI and a professor. This committee discussed contentious issues but failed to reach agreement and subsequently ceased its discussions. In September 2005, the KTC concluded the discussion without any agreement about the expiration of the legal deadline for the discussion.

-In March 2006, the KTC resumed the representative meeting of labor, management and government to discuss the plans again. Again, the KCTU joined the meeting beginning in June.

-In September 2006, the FKTU and management agreed to a five year suspension of the implementation of the regulations on full time workers and multiple unions. The government and KCTU were supposed to reveal their positions later after examining this issue in more detail. However, the KCTU made clear that they were opposed to the September agreement. On September 11, 2006, the government, FKTU and management finally agreed to a three year suspension of the implementation instead of another five year suspension. Since September, there have been no further significant developments in this area.

¶7. (U) Question: Please describe how the central and local Labor Relations Commissions operate, and their scope of responsibilities, including latitude in choice of remedies applied. Please provide statistics on:

-The number of disputes that were mediated and arbitrated in 2005, 2006, and if available, through early 2007.
-A breakout of types of disputes handled through mediation and/or arbitration.

-Operation: The Labor Relations Commissions (LRC) are consensus-based administrative bodies consisting of tripartite representatives: workers, employers and the government. They are independent, quasi-judicial institutions and their major roles are to mediate and adjudicate disputes between workers and employers.

-The Labor Relations Commissions consist of the National Labor Relations Commission, 12 regional Labor Relations Commissions and one Special Labor Relations Commission (Seamen's Labor Relations Commission).

-The Labor Relations Commissions include an Adjudication Committee, Mediation Committee, Special Mediation Committee, Arbitration Committee, Teachers' Labor Relations Mediation Committee and Public Officials Labor Relations Mediation Committee. A Secretariat is established in the Labor Relations Commissions to organize the work of the Commissions.

-Functions: Pursuant to Article 28 of the Labor Standards Act and Article 82 of the Trade Union and Labor Relations Adjustment Act, the Labor Relations Commissions conduct adjudication over unfair dismissal and unfair labor practices and issue remedy orders.

-The order of remedy for unfair dismissal consists mainly of reinstatement and payment of an amount equivalent to wages lost (an amount that was to be paid to the worker if he/she was not dismissed). With the amendment of the Labor Standards Act beginning in July 2007, if the dismissed worker does not wish to get reinstated in his/her work, the Labor Relations Commissions can order a monetary compensation in an amount equal to or greater than the lost wages instead of reinstatement.

-The order of remedy for unfair labor practices may take different forms depending on the employer's behavior toward the workers and the seriousness of the violation of rights. Remedies include reinstatement (order to restore the worker to the former position before he/she was unfairly treated) and prohibition or prevention of employer control and intervention.

-The Labor Relations Commissions also conduct mediation and arbitration in accordance with the Trade Union and Labor Relations Adjustment Act. In the case of a request for mediation from a trade union or from an employer in a labor dispute due to failure of bargaining about working conditions, the Labor Relations Committees investigates the facts by listening to the arguments of the parties concerned, prepares a mediated proposal and recommends it to the parties for their consideration.

-Also, the Labor Relations Commissions conduct the arbitration when both parties submit a request for arbitration or one of the parties' requests arbitration by collective agreement. The arbitration ruling has the same effect as a collective agreement, regardless of whether the parties concerned accept it or not.

-Statistics:
See Table 3: Number of Mediated cases and results from 2005 to ¶2006.

¶8. (U) Question: Please describe any other judicial or quasi-judicial institutions which have responsibility for enforcing the labor laws which are the subject of this report. For example, for cases which are prosecuted under the Penal Code, which courts are involved; what is the scope of remedies and/or penalties available; and what is the appeals process?

-A person dissatisfied with the Regional Labor Relations Commission's order of remedy may ask NLRC for review of the decision and the application for review should be submitted within ten days from date of the receipt of the decision of the Regional Labor Relations Commission.

-A person dissatisfied with the NLRC's decision may resort to administrative litigation within fifteen days from the date of the receipt of the decision of the NLRC.

-If the application for review or the administrative litigation (Administrative court - High court - Supreme Court) is not filed within the above-mentioned period, the order of remedy is finalized.

-NOTE: The order of remedy remains effective even after the application for review or the administrative litigation is filed. END NOTE.

-However, a worker who considers himself/herself to have been unfairly dismissed does not have to follow the procedures of remedy at the Labor Relations Commission, and he/she can file a lawsuit directly with the civil court (High court-Supreme court).

-Attachment: A Manual for Labor Management for Foreign Investors

published by the KOILAF will be sent separately via pouch.

LABOR RIGHTS AND THEIR APPLICATION

¶9. (U) Question: Please provide the latest figures on the number of trade unions and their respective membership. Please include data on independent trade unions.

-As of the end of 2005, the total number of trade unions was 5,971 and the number of union members was 1,506,172 persons.

¶10. (U) Question: How many trade unions are currently not recognized by MOL? Why? Seoul 507, paragraph 9, notes that these trade unions generally operated without government interference. Is this still the case?

-The Trade Union and Labor Relations Adjustment Act allows workers to freely organize a trade union. By reporting its organization to an administrative agency, the trade union can be established.

-However, an organization set up by persons who are not "workers" (for example, an employer), or an organization whose operation is mainly funded by employers, or an organization whose main purpose is to engage in public welfare work or political activities cannot be regarded as a trade union. Therefore, in the above-mentioned cases, the application for establishment of trade union is rejected. Data

on these cases is not separately identified or managed.

-Trade unions not recognized by MOL continue to generally operate without government interference.

¶11. (U) Question: Please provide citations to, or copies of, source material that explains the historic decline in trade union membership.

-During the period of 1996 through 2005, the number of trade union members has not changed much, maintaining 1,400,000 to 1,500,000 persons. But, as the number of wage earners (potential members of trade union) increases every year (except for 1998) while the number of unionists remains constant, the union organization rate has decreased every year (organization rate: 13.3 percent (1996) to 12.0 percent (2001) to 10.3 percent (2005).

-See Table 4: Union Participation

¶12. (U) Question: Seoul 507, paragraph 18, notes that the Council of Korea Employers' Organizations (CKEO) and Korea Employers Federation (KEF) do not participate in collective bargaining and instead tend to influence the more working-level Korean government policy-making agenda and National Labor Relations Board discussions. Please elaborate on these points, e.g., the specific role these entities play in policy-making. What is the relationship between the roles played by high-ranking officials in FKTU and KCTU in collective bargaining versus their counterpart employer organizations?

-The Korea Employers Federation (KEF) is the official voice of Korean businesses in the fields of labor and social affairs and represents the interests of employers in various social dialogues.

-The KEF is dedicated to improving labor legislation, assisting in wage negotiations and collective bargaining, preventing labor disputes, assisting corporate human resource management, building business-friendly industrial safety and health systems, enhancing the efficiency of the social security system and establishing a productive welfare system.

-Particularly in relation to the Korea Tripartite Commission, the highest-level officials from tripartite parties including the KEF participate in the Plenary Committee to deliberate about labor policies and working conditions, principles and directions of the restructuring of the public sector as well as the development of systems and practices in industrial relations, and matters pertaining to support for projects designed for promoting cooperation among the tripartite parties. The second highest level officials from the tripartite parties participate in the Standing Committee where they review agenda submissions and coordinate on the matters entrusted to the Plenary Committee.

-The National Labor Relations Commission (NLRC) mainly performs adjudication and adjustment of labor relations. The KEF recommends candidates for the NLRC to represent employers and public interests. Officials from the KEF may participate in discussions at the NLRC as members representing employers. The number of members of the NLRC who are designated by the President is prescribed based on

consideration of work load. NLRC representatives are limited as follows: workers, not fewer than ten; employers, not more than 50; government, not more than 70. The KEF, when requested, submits employers' opinions or papers on relevant issues to the NLRC.

-To help individual enterprises successfully participate in collective bargaining, the KEF publishes the guidelines for collective bargaining and wage negotiation and provides its member companies and organizations with advisory and consulting services. The KEF does not participate directly in collective bargaining under its name but its officials may participate in collective bargaining and wage negotiations in a personal capacity as a bargaining agent. In this sense, the KEF sometimes participates in the collective bargaining of individual enterprises.

-The CKEO, founded in 1989, contributes to the development of labor policies and the enhancement of cooperation between labor and

management by forging a close alliance among employers' organizations in the nation. The CKEO, chaired by the leadership of the KEF, includes five national-level economic organizations and 87 regional employers' organizations as its members.

-The CKEO does not participate in collective bargaining but still influences the government policy-making by publishing employers' joint statements on specific issues or by holding high-level talks with Ministers and other senior government officials.

-Leaders of the two largest trade union umbrella organizations (KCTU and FKTU) influence collective bargaining by publishing their respective guidelines to lead collective bargaining and wage negotiations. However, high-level officials of both trade union umbrella organizations often directly intervene to handle bargaining or labor disputes of their strategically important workplaces.

-For labor and social policies intended to improve working conditions, the two trade union umbrella organizations typically cooperate with each other at all levels, though they are sometimes at odds about specific issues. A case in point is their disagreement on the Legislation on the Industrial Relations Advancement and the Reform of the Industrial Accident Compensation Insurance System.

-These conflicts have often resulted from a minor difference in the strategies and tactics of the labor movement between the groups. The FKTU is pursuing a pragmatic labor movement, valuing the importance of the social dialogue, while the KCTU gives priority to a more radical labor movement, preferring strikes to talks with employers or the government. High-level officials of the KEF have been involved in talks through various official and non-official channels with their counterparts of the FKTU and the KCTU, even when tensions appeared to be mounting between the three parties over key issues.

Non-regular Workers

¶13. (U) Question: Please provide the latest figures on the percentage of the workforce that are non-regular workers, broken out by type (e.g., contract, temporary, part-time). If available, please also provide a breakout of the differences in wages, benefits, and job security by type of non-regular worker.

-See Table 5: Numbers of workers

-See Table 6: Wage level of workers

-See Table 7: Comparison of Non-regular workers by voluntary and involuntary reasons

-See Table 8: Percentage of workers receiving employee welfare benefits

¶14. (U) Question: Past estimates of the non-regular workforce appear to have varied considerably between the MOL, National Statistics Office, Korean Labor Institute, and the respective trade union federations. What accounts for the differences in these estimates? Please provide comparative estimates or data where available, and an assessment of the accuracy/reliability of these respective sources.

-In Korea, the statistics on non-regular workers of the government, research institutes, and the labor community are all derived from the same data obtained by the Economically Active Population Survey and the Supplementary Survey to the Economically Active Population Survey conducted by the National Statistical Office. The reason why the estimates of the non-regular workforce vary depending on who

compiles the statistics is that each organization applies a slightly different scope to the non-regular workforce.

-The Economically Active Population Survey and the Supplementary Survey to the Economically Active Population Survey are conducted during the same period on the same sample households. Except for the difference in survey items, they are practically identical surveys.

-The definition of non-regular workers is not internationally

standardized. In July 2002 the tripartite partners at the Korea Tripartite Commission agreed to the definition of non-regular workers. According to this definition, non-regular workers include contingent workers, part-time workers and atypical workers.

-However, the Korea Labor Society Institute (KLSI) adds the number of temporary and daily workers, as calculated by the Economically Active Population Survey, in addition to the non-regular worker numbers defined by the tripartite parties.

-The method used by the KLSI is erroneous because the classification of temporary and daily workers in the Economically Active Population Survey is not based on the type of employment of the workers. For this reason, the Supplementary Survey to the Economically Active Population Survey was conducted to figure out the type of employment of non-regular workers.

-Currently, the National Statistical Office publishes official figures of non-regular workers as agreed upon at the Korea Tripartite Commission. According to the figures, as of August 2006, there are 5,460,000 non-regular workers (35.5 percent of total wage workers).

-Consequently, there is no statistical disparity within the government agencies regarding the number of non-regular workers. The figures by the Korea Labor Institute are also almost the same as the government's statistics, with some negligible difference occurring due to a finer statistical break-down.

Freedom of Association

¶15. (U) Question: Have there been any amendments to the January 2006 law granting limited rights to public employees to associate and bargain collectively? Specifically, does the proscription on association and bargaining still apply to civil servants above grade 5? What percentage of the public sector is thereby excluded? What specifically are permissible and non-permissible subjects for bargaining?

-Public officials' right to organize: The Korean government implemented institutional reforms in stages to guarantee freedom of association to public officials. In the first stage, public officials were allowed to organize workplace associations (1999). At the second stage, based on the tripartite agreements of February 6, 1998 and after gathering opinions from the public and discussions at the Korea Tripartite Commission over five years, the Act on Establishment and Operation of Public Officials' Trade Unions (Public Officials' Trade Union Act) was enacted on January 27, 2005 and entered into force on January 28, 2006. Under this Act, public officials have the right to freely set up a trade union and are allowed to make agreements through collective negotiation with government representatives in relation to their working conditions.

-However, public officials' working conditions are determined by laws and budgets. Given the nature of their work with the public and the importance that the continuation of national functions must be secured as well as the fact that their status is firmly guaranteed by the Constitution and laws, some public officials' right to collective action is inevitably restricted. NOTE: The right to collective action was already recognized for general government employees (e.g. job counselors in job centers) who are not professional public officials subject to the Public Officials Act, and for public officials engaged in manual labor, such as those in postal services and the National Medical Centers. END NOTE.

-Korea adopted a professional public officials system, characterized by its strong rank scheme, under which public officials are given different authority and responsibility according to their rank. Public officials at grade five or above account for only four percent (40,000 persons) of the 940,000 public officials. The number of grade five public officials is approximately 29,000. Because they usually hold a managerial position, directly taking part in decisions on major national policies or supervising and directing subordinates, they have been excluded from those eligible to join a trade union.

-According to the ILO Convention No. 151, the right to organize can be restricted by national laws or regulations for "high-level employees whose functions are normally considered as policy-making or managerial, or employees whose duties are of a highly confidential nature." Management officials and supervisors have

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thus been largely excluded by law in many countries from the scope of public officials guaranteed the right to organize. Nevertheless, the ROKG is planning to consider allowing public officials at grade five to organize and join an association, as a long-term goal, so that these officials can better represent their interests.

-Matters subject to Collective Bargaining: The Public Officials' Trade Union Act provides that matters concerning public officials' remunerations, pensions and welfare and other matters directly related to working conditions and trade unions are the subjects of collective bargaining between the government representatives and public officials' unions for a collective agreement.

-However, unlike workers in the private sector, public officials' status is guaranteed by the Constitution and laws and most of their working conditions are determined by laws and budgets. Therefore, the ROK Government maintains that there are limitations when making decisions regarding working conditions through collective negotiation between the government and public officials' unions. Matters concerning policy by national and local authorities and matters concerning managerial rights are also excluded from collective bargaining. NOTE: The following areas are non-permissible subjects for bargaining (Article 4 of the Enforcement Decree of the Act on the Establishment and Operation of Public Officials' Trade Unions): Matters concerning policy planning or establishment of plans, matters concerning the exercise of appointment authorities including hiring, promoting and transferring public officials, matters concerning the organization of a body and the regular staff, matters concerning the drawing up and execution of budgets and funding, matters concerning contestation where the administrative agency is the party to the suit and other matters concerning the management and operation of the organization. END NOTE.

-Since the Constitution gives the National Assembly the authority to make laws and determine budgets, the collective agreements of public officials, even if they are signed through agreement between labor and management, cannot take precedence over the laws and budgets passed by the National Assembly. Even so, the Act on Establishment and Operation of Public Officials' Trade Unions has great significance in that it recognizes public officials' right to make collective agreements and requires the government representatives to implement the concluded collective agreements in good faith.

-In addition, although matters concerning policy decisions or personnel appointments are excluded from collective negotiation, such exclusion is inevitable as these matters are the public-sector equivalent of personnel and managerial rights in the private sector.

-Officials from the MOL noted that most countries adopting professional public officials' system grants in general only the right to collective bargaining, not the right to conclude collective agreements, and the matters concerning personnel and appointments and managerial rights are usually excluded from the negotiation.

¶16. (U) Question: Please provide an update on the status of the Korean Government Employees Union as well as the Confederation of Government Employees. What rights can each now exercise under the law?

-Under current law, public officials have the right to freely set up a trade union and are allowed to conclude collective agreements through collective negotiation with government representatives, as long as they establish a union and register with the government as prescribed by law.

-As of April 13, 2007, a total of 91 government trade unions had been established with membership totaling 83,687. Out of the 91 unions, 42 unions were negotiating with government representatives over their working conditions and a total of 15 trade unions had

concluded collective agreements.

-Immediately after the Act on the Establishment and Operation of Public Officials' Trade Unions came into effect, the Korea Federation of Government Employees (KFGE) registered their establishment according to the Act on September 4, 2006 and has since functioned as a legitimate trade union. Following its registration, the KFGE has actively carried out union activities and

is now preparing for negotiations with the Ministry of Government Administration and Home Affairs--the bargaining representative of the government--to discuss working conditions for public officials, including pensions, extension of the retirement age, wages, and other issues. Thus, for the first-time in the Republic of Korea, a central-level collective negotiation between public officials' unions and the government is likely to take place.

-The Korean Government Employees Union (KGEU) continues to refuse to engage in legal union activities while demanding the right to strike. However, as unions are established and collective negotiations increase within the current law, the demand from union members that KGEU convert to a legitimate union and pursue legitimate union activities has grown.

-For example, as of April 5, 2007, 23 branch offices with 11,229 members had seceded from the KGEU and registered themselves as legitimate trade unions. In addition, during two conventions of union delegates held on November 25, 2006 and February 24, 2007, the agenda item of "the conversion of the KGEU into an legitimate union" was tabled for a vote, but some union officials occupied the platform and physically obstructed the proceedings of the convention and consequently blocked the democratic decision making procedures for the KGEU's conversion into a legitimate union.

-As the demand from the rank-and-file union members for the conversion of the KGEU into a legitimate union continues to grow, it is expected to register as a legitimate union and pursue legitimate trade union activities in the future.

¶17. (U) Question: Please provide the latest data on the number of strikes, number of legal versus illegal strikes, number of workers participating in strikes, and number of lost workdays. Please identify data sources, including an assessment of reliability.

-See Table 9: The number of strikes (legal versus illegal), number of workers participating in strikes, and number of lost workdays covering the period from 2005 through 2007 March.

¶18. (U) Question: How often have criminal proceedings been initiated against illegal strikes? How many strikes were deemed illegal because of obstruction to business? How many trade unions and workers were prosecuted under the Penal Code for obstruction to business?

-The Korean government protects union workers' legal strike activities according to existing laws and principles, but sternly copes with illegal or violent strike activities, without exception. There have not been any instances of punishment due to an illegal strike itself. Punishment was due to additional criminal acts such as violence or occupation of facilities.

-During the past two years, the only instance deemed illegal because of obstruction to business was in March 2006 when the railway union strikes brought about serious damage to the nation's economy, in spite of mediation. The remaining instances were punished as illegal strikes or by additional criminal acts such as violence or occupation of facilities.

-In regard to the charge of obstruction of business, the criminal law stipulates that those who obstruct business by exercising a deceptive scheme or power should be punished. Those who were prosecuted on charges of obstruction of business, without additional criminal acts, numbered three in 2006, and related to the cases of the railway union. Subsequent to their arrest, two were released on bail and one received probation.

¶19. (U) Question: Please provide data from the most recent two years on the number of trade unionists detained and arrested, and

the reason(s) why.

-In 2005, 114 trade unionists were arrested. All 114 were prosecuted because of their involvement in additional criminal acts such as violence, throwing Molotov cocktails, injuring policemen or occupying facilities.

-In 2006, out of 188 prosecuted, 185 were involved in violence and the remaining three, members of the railway union, were prosecuted simply on charges of obstruction of business.

¶20. (U) Question: Please provide the full citation to the "law on demonstrations. How frequently has Article 12 of that law been invoked to deny trade unions the right to assemble? Please provide data from the last two years, if available. Has the ROK responded to the request from the U.N. Human Rights Committee for detailed

information on the frequency of, and circumstances under which, Article 12 has been used to deny freedom of assembly? If so, please provide a copy or an online source.

-See Table 10: Statistics on the issuance of prohibition order on assemblies based on Article 12 of the Assembly and Demonstrations Act

-The ROKG indicated they have not received a request from the UN Human Rights Committee for the information on the frequency or circumstances under which Article 12 has been used to deny freedom of assembly in Korea.

Right to Organize and Bargain Collectively

¶21. (U) Question: Will the KTC be the sole venue for discussions on how to advance the multiple unions reform now slated for implementation at the end of 2009? What is KCTU's position on participation in discussions concerning this reform?

-During the three-year suspension period, the KTC will draw up plans for minimizing possible troubles when multiple unions are implemented and the ban of payment for union officials begins.

-KCTU has yet to clarify its position on participating in the KTC. As one possible indicator of its desire to play a part in the discussion, KCTU proposed to form a task force between labor and government in March 2007. Although the proposed task force was primarily focused on the Korean Government Employees' Union, KCTU proposed that the task force look into other industrial relations issues as well. The government refused the proposal and KCTU has since remained silent on the matter.

¶22. (U) Question: How many trade unions are registered in the free economic zones (FEZs)? If any, how many workers do these unions represent? Please break out these data by domestic and foreign enterprises. If available, please provide data on the number of collective bargaining agreements in domestic and foreign enterprises, and their scope of coverage.

-See Table 11: The number of trade unions registered in the Free Economic Zones and the number of union members.

-Under the Constitution and the Act on the Trade Union and Labor Relations Adjustment Act, the right to bargain collectively and the right to conclude collective agreements for trade unions are protected, regardless of the number of union members. Therefore, most trade unions conclude collective agreements with employers which apply to the corresponding trade unionists. There is no separate data on the number of collective agreements concluded or on the scope of coverage.

Acceptable Conditions of Work

¶23. (U) Question: For each of the categories below (wages, hours, and occupational safety and health), please also include information on the number of labor inspectors, number of inspections conducted over the two most recent years for which data are available, number and type of violations found, and corresponding remedies applied and/or penalties assessed. Please indicate source and reliability of data.

-See Table 12: Number of Labor Inspectors

-See Table 13: Number of inspections conducted, violations committed and their type, applied remedies or penalties imposed

¶24. (U) Question: Minimum Wage: Please provide the most recent figures on the minimum wage and the percentage of the workforce earning it.

-See Table 14: Minimum wages and those subject to the Minimum wages

-Reduction of work hours: statutory hours of work are being reduced from 44 hours per week to 40 hours. The 40-hour work week is being implemented in stages for all workplaces in accordance with the statutory enforcement date.

-Statutory enforcement date (Addenda 4 of the Labor Standards Act): July 2004 for Finance, Insurance, Public services firms, Businesses with 1000 employees or more; July 2005 for businesses with 300 employees or more; July 2006 for businesses with 100 employees or more; July 2007 for businesses with 50 employees or more; July 2008 for businesses with 20 employees or more. A date will be set later

for businesses with fewer than 20 employees but it will be before ¶2011. The total number of hours worked has decreased since 2000.

-See Table 15: Total hours worked per year

¶25. (U) Question: Hours of Work: Per paragraph 17 of septel 06 Seoul 549, is the ROK still on target to reduce the legal workweek for employees in small to medium-sized enterprises according to the timeline given here? How widespread are problems related to forced overtime in small and medium enterprises? If data are available, please provide statistics.

-The ROK continues on its path to implement the reduced hours of work. Last year the law took effect for enterprises with more than 100 employees and this July it will take effect for enterprises with 50 or more employees.

-Pursuant to Article 53 of the Labor Standards Act, hours of work may be extended up to 12 hours per week if the parties concerned reach agreement, but there were no cases reported of forced overtime work.

-However, 69 violations of rules on the prohibition of extended work were reported in 2006 for working hours exceeding 12 hours per week, regardless of whether it was based on the agreement between workers and employers. Source: MOL Electronic System (Nosanuri, as of April 13, 2007)

¶26. (U) Question: Please clarify what the law states regarding when overtime must be paid. Is the 50 percent wage premium for overtime work mandated by law for all enterprises?

-Working hours per week must not exceed 40 hours excluding rest hours. However, if the parties concerned reach an agreement, working hours may be extended up to 12 hours per week (Article 53 of the Labor Standards Act).

-In this case, an employer must pay 50 percent more for the extended hours as provided for in Article 56 of the Labor Standards Act (Article 56 of the Labor Standards Act). However, for three years from the enforcement date of the 40-hour work week, working hours may be extended up to 16 hours if the parties concerned reach an agreement. For the first four hours of extended work, an employer is only required to pay 25 percent more (Addenda 4, the Labor Standards Act). The provisions on overtime work apply to all businesses or workplaces where 5 workers or more are employed (Article 11 of the Labor Standards Act).

¶27. (U) Question: Occupational Safety and Health: Please provide the most recent data on the number of injuries, accidents, and fatalities. As requested above, please include available data on remedies and penalties.

-As of September 2006, there were 59,134,271 injuries, 60,119 accidents and 1,858 fatalities reported in 2006.

-Out of 11,479,107 workers working at 1,213,608 workplaces covered by the Casualty Compensation Insurance Act, casualties requiring medical care for 4 days or more numbered 67,271. The accident rate was 0.59 percent.

¶28. (U) Question: The 2006 Human Rights Report notes that Korea's accident rate is high by international standards. What data were used to make this comparison? What has accounted for the historically high rate of fatalities from industrial accidents?

-According to the Labor Ministry's second Five-Year Plan for the Prevention of Industrial Accidents, it is difficult to compare Korea to other nations because the ROK does not have generalized international standards regarding the calculation of accident rates. Additionally, standards to compile statistics and definitions of occupational accidents are different. However, the 2002 analysis shows that Korea's accidental rate was 0.65 percent, higher than Japan's of 0.26 percent when converted and compared to Japanese standards.

-Korea's occupational fatality rate was 1.45 in 2003, 2.4 to 5 times higher when compared with Japan (0.33 in 2001), Germany (0.29 in 2001) and the U.S. (0.60 in 2001).

-Some possible reasons that the MOL offered for Korea's higher fatalities are: first, Korea's rapid economic growth and development leads to process variation; second, the increase of death and accidents of non-professional workers because of the flexibility of labor markets and reliance on foreign workers; third, the rise in

occupational diseases because of occupational stress and the use of hazardous and dangerous chemicals.

¶29. (U) Question: Please provide a brief description of the Fatal Accident Prevention Program, and how it is contributing to a reduction of fatalities (assuming this trend has continued through 2006).

-The program is designed to provide technical services and education on occupational safety and health to help prevent serious accidents and death at the workplace.

-The Labor Ministry and KOSHA are pushing ahead with the High-Five Movement, a labor and management self-supported prevention project, by choosing the top 5 occupations in terms of fatality risk and high accident rates.

-With this movement started in May 2005, the Labor Ministry and KOSHA have engaged in various public relations activities such as distribution of leaflets, publication of technical materials about occupations that frequently result in occupational diseases, creation and operation of a website and guidance of visits to workplaces. As of March 2007, there were approximately 200 workplaces which had registered with the High-Five Movement.

-The KOSHA inspects and verifies prevention plans on dangerous and hazardous facilities so that the builder can manage dangerous elements of large-scale construction projects and check in periodically during construction. This brought about favorable results as fatalities at construction sites declined by 0.3 percent.

-Recognizing that oil refining and chemical plants may seriously affect residents near the plant, the environment and plant workers, the KOSHA implemented the 'Process Safety Management System' (PMS). Under PMS, notoriously dangerous operations must submit a process safety report when building a new facility for inspection and verification to help prevent serious industrial accidents. 781 facilities are currently being managed under the PMS plan.

-In addition, in order to reduce accidents in small workplaces that have a poor working environment, the KOSHA is conducting 'Making Clean Workplaces' (367 million dollars during the period of 2002 through 2006). This project provides facilities with improvement expenses and a 'Comprehensive Health Promotion Program,' to prevent

occupational diseases and educate employees on industrial safety and health.

¶30. (U) Question: KoILAF has recently reported on the MOL's 2007 Comprehensive Plan for Labor-Management at the Workplace. What precipitated this initiative? Will MOL hire more inspectors to implement it?

-The MOL reports that worksite inspections have been carried out continuously since the enactment of the Labor Standards Act in 1953, in a effort to protect basic rights for vulnerable workers, including non-regular workers. Inspections in 2007 will be strengthened much more than 2006 as the implementation of the non-regular workers-related laws begins in 2007. The number of worksites to be inspected will be increased from 12,620 in 2006 to 18,470 in 2007.

-Worksite inspections are being carried out by 1,093 labor inspectors from the 46 local labor offices across the country. As the Act Concerning Protection of Fixed-term and Part-time Employees will be implemented from July 1, 2007, there is need for more labor inspectors to carry out effectively the discrimination related work. But as of now, there are no plans for hiring more labor inspectors. For reference, 80 additional labor inspectors were added in 2005 and 374 labor inspectors were added in 2004.

Foreign Workers

¶31. (U) Question: Please provide updated figures on the number of foreign workers in the country, broken out by country of origin.

-See Table 16: Foreign Workers in ROK

¶32. (U) Question: How many workers have now entered under the new permit system? Have any of these workers joined or organized trade unions?

-See Table 17: Foreign workers in EPS

-Currently, there are no instances of foreign workers who came to

Korea under EPS who have established a trade union or joined a union. There was a case where foreign workers applied for the establishment of a trade union; however, the application was rejected because there were illegal workers among the applicants.

-NOTE: Case for rescission of the decision to reject the application for the establishment of a trade union (Case No. 2006 6774). END NOTE.

¶33. (U) Question: Have the provisions of the Industrial Safety and Health Act been extended to illegal foreign workers? If not, when is this expected to occur?

-The purpose of the Industrial Safety and Health Act is to maintain and improve the safety and health of workers as prescribed in the Labor Standards Act. Provided that illegal foreign workers are not excluded from the definition of a worker as outlined by the Labor Standards Act, the Act applies to foreign workers, too (Illegal foreign workers have never been excluded from the protection).

¶34. (U) Question: How many foreign workers are employed in the domestic/household service sector?

-As of January 2007, 3,563 ethnic Koreans of foreign citizenship are employed in the domestic/household service sector. The domestic/household service sector is authorized for the employment of ethnic Koreans with foreign citizenship only under the Special Employment Permit System.

¶35. (U) Question: In what sectors/industries have there been reports of worker abuse? Please provide any available data.

-Not specific sectors, but reports of worker abuse typically relate to unpaid wages or industrial accidents of foreign workers. These reports are possible in all industries employing foreign workers.

-In 2006, 1,330 employers were charged with worker abuse. Of these,

six were prosecuted. For the period of January through February 2007, 221 employers were charged.

INFORMATION SOURCES

¶36. (U) Question: Please let us know if there are any other documents or source materials which would be useful in drafting our report, either that you could provide or that we could obtain from publicly-available sources.

Post is sending Labor Management Manual for Foreign Investors and other materials via pouch for your reference.

Post submitted statistical tables in a Word file via e-mail.

STANTON